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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/798,805

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Ronald D. Shippert

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EXAMINER

JACKSON, BRANDON LEE

ART UNIT

PAPER NUMBER

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/798,805	Applicant(s) SHIPPERT, RONALD D.	
	Examiner BRANDON JACKSON	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/10/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 14 recites the limitation "not in contact with said adhesive" in Line 2.

There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Groiso (US Patent Re. 34,753).

Groiso discloses a method of providing a heated medical device comprising a kit including a medical device (2), a bag (9) for housing liquid (col. 4, lines 48-49), heating the medical device (2) while in the bag col. 5, lines 28-32), and removing the medical device (2) the bag (9). Groiso does not explicitly state a removal member for removing the medical device (2) from the bag (9). However, it is obvious and well known in the art that tongs or other grasping utensils are used to pull the medical device (2) out of the boiling water without burning the hands of the user. The medical device (2) would have to be positioned within a removal member in order to remove the medical device (2). A

Art Unit: 3772

portion of the removal member would be inside the bag (9) grasping the medical device (2); and a portion would be outside the bag (9) in the hands of the user. Further, Groiso discloses placing liquid (col. 4, lines 48-49) in the bag (9), and a wrap member (3) including adhesive (col. 5, lines 8-9). The removal member is fully capable of not being in contact with the wrap member (3) because it can merely grasp the plate of the medical device (2). The medical device (2) is fully capable of being a nose splint because Groiso discloses the medical device (2) can be cut and contoured to fit any desired portion of the human body (cols. 2-3, lines 66-2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Groiso (US Patent Re. 34,753) in view of Fried et al. (US Patent 6,725,118). Groiso

Art Unit: 3772

substantially discloses the claimed invention; see rejection to claim 1 above. Groiso also discloses holes (2A) in the medical device (2). Groiso fail to disclose the holes in the splint are formed by a laser. However, Fried discloses forming a splint via a laser (col. 5, lines 18-20). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Groiso device to be formed by a laser, as taught by Fried, because it is a quick way to form a splint to the exact dimensions desired by the user.

Claims 6-8, 11, 13, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groiso (US Patent Re. 34,753) in view of Faries (US Patent 6,910,485). Groiso discloses a method of providing a heated medical device comprising a kit including a medical device (2), a bag (9) for housing liquid (col. 4, lines 48-49), heating the medical device (2) while in the bag col. 5, lines 28-32), and removing the medical device (2) the bag (9). Groiso does not explicitly state a removal member for removing the medical device (2) from the bag (9). However, it is obvious and well known in the art that tongs or other grasping utensils are used to pull the medical device (2) out of the boiling water without burning the hands of the user. The medical device (2) would have to be positioned within a removal member in order to remove the medical device (2). A portion of the removal member would be inside the bag (9) grasping the medical device (2); and a portion would be outside the bag (9) in the hands of the user. Groiso fails to disclose a heating unit. One of the objectives of the Groiso device is to be able to heat a splint with minimal instruments. However,

Art Unit: 3772

Groiso teaches the bag (9), which contains the medical device (2), can be heated by submerging the bag in hot water. In order to heat the water that the bag will be submerged in, a heating unit must be used to heat the water.

Faries discloses a heating unit (31) comprising a heating plate (bottom of basin 33) that would come in contact with whatever is placed upon the heating plate (bottom of basin 33). The temperature of the heating plate (bottom of basin 33) is maintained using electrical power (col. 6, lines 27-30). The heating unit (31) includes an opening (top of basin 33) that is longer than it is wide (fig. 15). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Groiso device with the heating unit (31), as taught by Faries, as a means for heating the water for the bag to be submerged in.

Claims 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groiso (US Patent Re. 34,753) in view of Hand et al. (US Patent 5,769,089). Groiso substantially discloses the claimed invention; see rejection to claim 13 above. Groiso fails to disclose the adhesive on one side of the nose splint. However, Hand discloses a nasal splint (1) comprising an adhesive layer (11) and a wrap (10) not in contact with the adhesive layer (11). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the Groiso medical device for the splint, as taught by Hand, in order to substitute the medical device for a splint that will also exhibit some forces that will lift the skin of the user's nose and open the breathing passageway. Moreover, it would have been obvious to one of ordinary

Art Unit: 3772

skill in the art at the time of the invention to modify the Hand splint with holes, as taught by Groiso, in order to allow the user's skin to breathe and prevent the heat from the user's body from causing the adhesive to be not functional.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDON JACKSON whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brandon Jackson/
Examiner, Art Unit 3772

Application/Control Number: 10/798,805

Page 7

Art Unit: 3772

BLJ

/Patricia Bianco/

Supervisory Patent Examiner, Art Unit 3772